

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

MFA.No. 1342 of 2000()

OA.3/1999 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS:

1. CHELLAMMA W/o LATE RAMASWAMY CHETTIAR
2. K.R.BALAKRISHNAN S/o RAMASWAMY CHETTIAR
3. K.R.JAYALAKSHMI D/o RAMASWAMY CHETTIAR
4. K.R.CHANDRAN, S/o RAMASWAMY CHETTIAR
5. K.R.RAGHAVAN S/o RAMASWAMY CHETTIAR

APPELLANTS ARE RESIDING AT KARIMPUZHA THERUVU,
KARIMPUZHA AMSOM, DESOM, OTTAPPALAM TALUK AND
ARE REPRESENTED BY THEIR POWER OF ATTORNEY HOLDER MOHAMMED
S/o MOIDEEN, VALLIKKADAN,POMBRA DESOM,
ELUMBULASSERY AMSOM,OTTAPPALAM TALUK

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM
2. CUSTODIAN OF VESTED FOREST, ARANYA BHAVAN,
FOREST COMPLEX, OLAVAKKODE, PALAKKAD

BY GOVT PLEADER SRI C.M. SURESH BABU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M. F. A. No 1342 of 2000

Dated: 11th December 2006.

JUDGMENT

Radhakrishnan, J.

Appellants are the applicants in O.A. 3 of 1999 of the Forest Tribunal, Kozhikode. Application was dismissed on the ground of limitation as well as on merits.

2. Counsel appearing for the appellants addressed arguments on the question of limitation as well as merits of the case. We may first examine as to whether the Forest Tribunal is justified in dismissing the application on the ground of limitation. Application was filed before the Tribunal on 14.01.1999. According to the applicants, they came to know of the notification published under sub-rule (2) of Rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 notifying the schedule property as private forest only on 20.02.1999 when the workers were prevented from doing any work in the schedule property. Placing reliance on Ext. A1 power of attorney executed by the applicants in favour of P.W.1,

the Tribunal stated that on a plain reading of Ext. A1 would indicate that on the date of execution of Ext. A1 the schedule property was in the possession of the Forest Department. Tribunal noticed from the recitals in Ext. A1 that the applicants were dispossessed from the schedule property much prior to 1995 and the dispossession of the applicants indicates knowledge of the notification. Tribunal therefore found that since the publication of the notification was much before 1995 and the application was not filed within sixty days as laid down in the Rules, the application was barred by limitation.

3. Sri V. Chithambareesh, counsel appearing for the applicants, submitted that the Tribunal has committed an error in not examining the question as to whether the requirement of Rules 2 and 3 has been complied with or not. Counsel placed considerable reliance on the decision of a Division Bench of this court in Thanka v. State of Kerala (2001 (3) KLT 801).

4. Counsel appearing for the Forest Department on the other hand contended that the Rules are only directory and since the applicants were dispossessed prior to 1995 it must be presumed that they had knowledge of the notification.

5. Rule 3 of the Kerala Private Forests (Tribunal) Rules 1972

requires filing of an application within sixty days from 6.8.1981 or from the date of publication of the notification under sub-rule (2) of Rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974. According to the counsel, the property was notified to be a vested forest as it vested in the Government by virtue of operation of Act 26 of 1971 by notification dated 29.7.1977 which was published as required by law. Sub-rule (3) of Rule 2A of the Vesting Act states that the fact that a notification has been published under sub-rule (2) shall be published in two or more newspapers having circulation in the locality. Respondent - State either before the Tribunal or before this court have not produced any material to show that the notification has been published in two or more newspapers having circulation in the locality. Notification, it is seen, was published only in the gazette and not in the newspapers as provided under sub-rule (3) of Rule 2A.

6. We are of the view, the reasoning of the Tribunal that dispossession of the applicants indicates knowledge of the notification cannot be sustained. Knowledge of the applicants can be attributed only if the State publishes notification in two or more newspapers having circulation in the locality especially when the

applicants raised a contention that they were unaware of the notification. We therefore hold that rejection of the application by the Tribunal on the ground of limitation cannot be sustained. All the same, we are inclined to give an opportunity to the State to establish that they had complied with sub-rule (3) of Rule 2A of the Vesting Rules. Since we are remitting the matter back to the Forest Tribunal, we are not examining the various contentions raised by the counsel on the merits of the case. In such circumstances, we set aside the order of the Forest Tribunal and remand the matter to the Tribunal for fresh consideration. It is open to the parties to adduce fresh evidence before the Tribunal to establish their respective contentions. Considering the facts and circumstances of the case, we direct the Tribunal to pass final orders within a period of four months from the date of receipt of a copy of this judgment.

SD/-
(K.S. RADHAKRISHNAN, JUDGE)

SD/-
(M.N. KRISHNAN, JUDGE)

11/12/2006
en/

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